

IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

UNITED STATES OF AMERICA

Plaintiff,

v.

Civil No. 2:11-cv-1075

JOHN LLOYD KIRK, individually and d/b/a  
INDIAN NATIONS ADVOCATE LAW  
OFFICE, THE KIRK OF YAHH HAVA, and  
YAHH HAVAH 508 LLC

Defendant.

COMPLAINT FOR PERMANENT INJUNCTION AND OTHER EQUITABLE RELIEF

Plaintiff United States for its complaint against John Lloyd Kirk, individually and doing business as Indian Nations Advocate Law Office, The Kirk of Yahh Hava and Yahh Havah 508 LLC, alleges as follows:

1. This is a civil action brought by the United States under 26 U.S.C. §§ 7402(a) and 7408 to enjoin John Lloyd Kirk, individually and doing business as Indian Nations Advocate Law Office, The Kirk of Yahh Hava and Yahh Havah 508 LLC, and anyone in active concert or participation with him, from the following activities:
  - a. Directly or indirectly organizing, promoting, marketing or selling any plan or arrangement that advises or assists taxpayers to attempt to violate the internal revenue laws or unlawfully evade the assessment or collection of their federal tax

liabilities, including promoting, selling or advocating the use of false tax returns and Forms 1099-OID or claiming false OID income based on the false claim that:

- i. Taxpayers can draw on the Treasury of the United States to pay their tax debt or other debt using Forms 1099-OID or other documents;
  - ii. Taxpayers can issue false Forms 1099-OID to a creditor and report the amount on the false Forms 1099-OID as income taxes withheld on their behalf;
  - iii. Taxpayers have a secret account with the Treasury Department, which they can use to pay their debts or which they can draw on for tax refunds through a process that is often termed “redemption” or “commercial redemption” by promoters of this tax-fraud scheme.
- b. Engaging in conduct subject to penalty under 26 U.S.C. § 6700, i.e., by making or furnishing, in connection with the organization or sale of a plan or arrangement, a statement about the securing of a tax benefit that Kirk knows or has reason to know to be false or fraudulent as to any material matter under the federal tax laws;
- c. Engaging in conduct subject to penalty under 26 U.S.C. § 6701, including preparing and filing tax returns and other documents that understate the tax liabilities of others;
- d. Preparing or filing, or assisting in, or directing the preparation or filing of any federal tax return or amended return or other related documents or forms for any other person or entity;
- e. Giving tax advice or assistance to anyone for compensation;
- f. Preparing his own federal income tax returns claiming false income tax withholding and refunds based on amounts shown in false Forms 1099-OID issued to his creditors;
- g. Representing anyone other than himself before the Internal Revenue Service;

- h. Engaging in any conduct that interferes with the administration and enforcement of the internal revenue laws; and
- i. Engaging in any activity subject to penalty under the Internal Revenue Code.

Jurisdiction and Venue

- 2. Pursuant to 26 U.S.C. §§ 7402 and 7408, this action has been requested by the Chief Counsel of the Internal Revenue Service, a delegate of the Secretary of the Treasury, and is brought at the direction of the Attorney General of the United States.
- 3. Jurisdiction is conferred on this Court by 28 U.S.C. §§ 1340 and 1345 and 26 U.S.C. § 7402(a).
- 4. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because Defendant John Lloyd Kirk resides and does business in Des Moines, Washington within this judicial district.

Defendant's Activities

- 5. Kirk conducts business in the State of Washington through the Indian Nations Advocate Law Office, the Kirk of Yahh Hava, and Yahh Havah 508 LLC.
- 6. Through the Indian Nations Advocate Law Office and Kirk of Yahh Hava, Kirk promotes scams that involve the use of false Forms 1099-OID or claiming false original issue discount (OID) income in order to claim fraudulent tax refunds.
- 7. Kirk purports to be a member of good standing of the Tulalip Tribal Bar and allowed to practice law before its tribal court although he is not an attorney.
- 8. Kirk's scheme is part of a ongoing trend amongst tax protestors to file frivolous tax returns and Forms 1099-OID (or to claim false OID income) with the IRS and courts in an attempt to escape their federal tax obligations and steal from the U.S. Treasury.
- 9. Original issue discount (OID) income refers to the difference between the price for which a debt instrument is issued and its stated redemption price at maturity. OID income is generally included in a taxpayer's income as it accrues over the term of a debt instrument,

1 regardless if the taxpayer receives payments from the issuer of the debt instrument. OID  
2 income is treated like a payment of interest and a party issuing a financial instrument  
3 generating OID income must issue a Form 1099-OID.

4 10. In 2009 and 2010, Kirk held seminars in Washington and Nevada promoting his 1099 OID  
5 scheme to others, which at least 50 customers attended. Kirk also sells DVD recordings of  
6 his 1099 OID seminars to others.

7 11. At his 1099 OID seminars, Kirk advises his customers that they can draw on a secret account  
8 with the United States Treasury to pay their debts. He further advises his customers to file  
9 bogus tax returns with fraudulent Forms 1099-OID to draw on this secret account that the  
10 Treasury supposedly maintains for each person. Accordingly, he advises his customers to  
11 file false Forms 1099-OID and tax returns seeking tax refunds for amounts equal to the  
12 amounts of their mortgages, car loans, credit card debts, and other debts as well as any  
13 interest incurred on those obligations.

14 12. Furthermore, Kirk provides step-by-step instructions and templates to his customers  
15 directing them how to prepare and submit the frivolous tax returns and forms (e.g. Form  
16 1099-OID, Form 1099-A, Form 1096 and Form W-3) to the IRS. For a \$500 fee, Kirk also  
17 offers to personally prepare the tax forms for his customers. For an additional fee of  
18 \$175/hour, Kirk also offers to help his customers challenge an IRS penalty assessment for  
19 filing a frivolous return.

20 13. Kirk prepared false Forms 1099-OID for at least one customer, Thomas Haggerty, advising  
21 him to file the forms with the IRS in order to seek a fraudulent refund of over \$130,000,  
22 which Haggerty was not entitled to receive.

23 14. At least 31 of Kirk's customers have filed fraudulent returns based on the 1099 OID scheme,  
24 with false claims totaling approximately \$8 million.

**Count I: Injunction under 26 U.S.C. § 7408 for Violating 26 U.S.C. §§ 6700 and 6701**

15. The United States incorporates by reference the allegations contained in paragraphs 1 through 14.

16. The United States may seek an injunction to enjoin any person from, *inter alia*, entering in conduct subject to penalty under 26 U.S.C. §§ 6700 or 6701 if injunctive relief is appropriate to prevent recurrence of that conduct.

17. Section 6700 of the Internal Revenue Code imposes a penalty on any person who organizes or participates in the sale of a plan or arrangement and in so doing makes a statement with respect to the allowability of any deduction or credit, the excludability of any income, or the securing of any tax benefit by participating in the plan or arrangement which that person knows or has reason to know is false or fraudulent as to any material matter.

18. Kirk organized and participated in the sale of his 1099 OID seminars and in so doing, made statements to his customers about securing tax benefits – namely fraudulent refunds – that he knew or had reason to know were false and fraudulent.

19. Kirk falsely promised larger tax refunds from the government, which he knew or had reason to know were predicated on the submission of false and frivolous documents to the IRS.

20. As a result, Kirk engaged in conduct subject to penalty under 26 U.S.C. § 6700.

21. Section 6701 of the Internal Revenue Code imposes a penalty on any person who aids or assists in, procures, or advises with respect to, the preparation of any portion of a return, affidavit, claim, or other document, who knows (or has reason to believe) that such portion will be used in connection with any material matter arising under the internal revenue laws, and who knows that such portion (if so used) would result in an understatement of the liability for tax of another person.

22. Kirk prepared and aided or assisted in the preparation and filing of a federal income tax return and Forms 1099-OID for at least one customer that he knew would result in the understatement of his customer's tax liabilities.

23. As a result, Kirk engaged in conduct subject to penalty under 26 U.S.C. § 6701.

24. Injunctive relief is appropriate to prevent recurrence of Kirk's penalty conduct.

**Count II: Injunction Under 26 U.S.C. § 7402**

25. The United States incorporates by reference the allegations contained in paragraphs 1 through 24.

26. Courts may issue injunctions as may be necessary or appropriate for the enforcement of the internal revenue laws, even if the United States has other remedies available for enforcing those laws. 26 U.S.C. § 7402.

27. Kirk substantially interfered with the enforcement of the internal revenue laws by promoting his "redemption" or "commercial redemption" tax-fraud scheme and filing frivolous federal tax returns and other documents on behalf of his customers.

28. As a result of Kirk's misconduct, his customers fail to file proper tax returns and instead file frivolous refund claims. In one instance, an erroneous refund of over \$700,000 was issued to his customer.

29. Kirk's conduct results in irreparable harm to the United States for which the United States has no adequate remedy at law.

30. Kirk's conduct interferes with the proper administration of the Internal Revenue laws because it results in frivolous filings with the IRS that hinder the IRS's ability to determine the correct tax liabilities of his customers.

31. Unless enjoined by this Court, Kirk will continue to promote and administer his tax-fraud scheme.

32. The United States is entitled to injunctive relief under 26 U.S.C. § 7402(a) to prevent the recurrence of this misconduct.

WHEREFORE, Plaintiff, the United States of America, prays for the following relief:

A. That the Court find that Kirk has continually and repeatedly engaged in conduct subject to penalty under 26 U.S.C. §§ 6700 and 6701 and that injunctive relief is appropriate under 26 U.S.C. §§ 7402 and 7408 to bar Kirk from engaging in conduct subject to penalty under 26 U.S.C. § 6700 and 6701;

B. That this Court, under 26 U.S.C. §§ 7402 and 7408, enter a permanent injunction prohibiting Kirk and his representatives, agents, servants, employees, and anyone in active concert or participation with him, from directly or indirectly by means of false, deceptive, or misleading commercial speech:

i. Directly or indirectly organizing, promoting, marketing or selling any plan or arrangement that advises or assists taxpayers to attempt to violate the internal revenue laws or unlawfully evade the assessment or collection of their federal tax liabilities, including promoting, selling or advocating the use of false tax returns and Forms 1099-OID or claiming false OID income based on the false claim that:

a. Taxpayers can draw on the Treasury of the United States to pay their tax debt or other debt using Forms 1099-OID or other documents;

b. Taxpayers can issue false Forms 1099-OID to a creditor and report the amount on the false Forms 1099-OID as income taxes withheld on their behalf;

c. Taxpayers have a secret account with the Treasury Department, which they can use to pay their debts or which they can draw on for tax refunds through a process that is often termed “redemption” or “commercial redemption” by promoters of this tax-fraud scheme.

- ii. Engaging in conduct subject to penalty under 26 U.S.C. § 6700, i.e., by making or furnishing, in connection with the organization or sale of a plan or arrangement, a statement about the securing of a tax benefit that Kirk knows or has reason to know to be false or fraudulent as to any material matter under the federal tax laws;
- iii. Engaging in conduct subject to penalty under 26 U.S.C. § 6701, including preparing and filing tax returns and other documents that understate the tax liabilities of others;
- iv. Preparing or filing, or assisting in, or directing the preparation or filing of any federal tax return or amended return or other related documents or forms for any other person or entity;
- v. Giving tax advice or assistance to anyone for compensation;
- vi. Representing anyone other than himself before the Internal Revenue Service;
- vii. Engaging in any conduct that interferes with the administration and enforcement of the internal revenue laws, and;
- viii. Engaging in any activity subject to penalty under the Internal Revenue Code.

C. That the Court, under 26 U.S.C. § 7402, enter a permanent injunction prohibiting Kirk and his representatives, agents, servants, employees, attorneys, independent contractors, and anyone in active concert or participation with her, from directly or indirectly preparing Kirk's own federal income tax returns claiming false income tax withholding and refunds based on amounts shown in false Forms 1099-OID issued to his creditors;

D. That this Court, under 26 U.S.C. § 7402, enter an injunction requiring Kirk to contact by mail (and also by e-mail, if an address is known) all persons who have purchased any products, services or advice associated with the false or fraudulent tax scheme described in this complaint and inform those persons of the Court's findings concerning the falsity of Kirk's prior representations and attach a copy of the permanent injunction against Kirk;



- 1 E. That this Court, under 26 U.S.C. § 7402, order Kirk to provide to the United States a list of  
2 all persons who have purchased any products, services or advice from him in the past three  
3 years;  
4 F. That this Court allow the government full post-judgment discovery to monitor Kirk's  
5 compliance with the injunction, and;  
6 G. That this Court grant the United States such other and further relief as the Court deems just  
7 and appropriate.

8 Dated: June 30, 2011.

9 Respectfully submitted,

10 JENNY A. DURKAN  
11 United States Attorney

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